IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

WP(C).No. 6413 of 2006(L)

---

PETITIONER:

---

USMAN M., S/O. MOHAMMED,
MUNDEMBARA, KALKULAM, KARAPURAM P.O.,
EDAKARA, MALAPPURAM DISTRICT.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

RESPONDENTS:

---

1. THE TAHSILDAR, NILAMBUR.

2. REVENUE DIVISIONAL OFFICER,
PERINTHALMANNA.

3. DISTRICT COLLECTOR, MALAPPURAM.

ADDL. 4. MOOTHEDAM GRAMA PANCHAYAT, KARAPPURAM P.O.,
MALAPPURAM DIST., REPRESENTED BY ITS SECRETARY.

ADDL. R4 IS IMPLEADED AS PER ORDER ON I.A. 3680 OF 2006 DATED 10.3.2006

R1 TO R3 BY G.P. SRI.C.K. GOVINDAN
ADDL. R4 BY ADV. SMT.C.B.SUMA DEVI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF CERTIFICATE DATEE 1.12.2004 ISSUED BY THE SECRETARY, MOOTHEDAM GRAMA PANCHAYAT

EXT.P2 TRUE COPY OF THE ASSESSMENT ORDER DATED 26.8.2004 ISSUED BY THE FIRST RESPONDENT.

EXT.P3 TRUE COPY OF THE ORDER ISSUED BY THE FIRST RESPONDENT UNDER SECTION 5A OF THE KERALA BUILDING TAX ACT DATED NIL.

EXT.P4 TRUE COPY OF THE ORDER DATED 5.4.2005 ISSUED BY THE 2ND RESPONDENT.

EXT.P5 TRUE COPY OF MEMORANDUM OF REVISION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 22.7.2005

EXT.P6 TRUE COPY OF THE ORDER DATED 1.8.2005 PASSED BY THE 3RD RESPONDENT.

EXT.P7 TRUE COPY OF THE TAX RECEIPT NO. 24 DATED 30.12.1998 ISSUED BY THE 4TH RESPONDENT.

EXT.P8 TRUE COPY OF REMITTANCE CERTIFICATE DATED 20.7.2007 ISSUED BY THE FOURTH RESPONDENT.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

---

W.P.C. NO. 6413 OF 2006

---

Dated this the 6th day of August, 2007

JUDGMENT

Petitioner constructed a building of the plinth area above the limit that attracts luxury tax. Petitioner has paid building tax assessed in respect of the same. However, the case of the petitioner is that construction of the building was completed prior to the date on which luxury tax came into force that is 1.4.1999 and therefore demand of luxury tax is untenable. Petitioner has produced certificate and tax receipt from the addl. fourth respondent-Panchayath stating that construction of the building was completed in 1998. It is seen from the receipt obtained and produced by the petitioner from the Panchayath that tax was paid on 30.12.1998. Counsel appearing for the Panchayath stated that tax receipt is issued by the Panchayath.

2. It is common knowledge that Panchayath issues tax receipt for the purpose of applying for electricity connection, water connection, etc. which may happen even before full completion of construction of the building which alone attracts tax liability. Therefore certificsate

issued by the Panchayath is not conclusive evidence on completion of construction of the building. However, if there is any other evidence to support the tax receipt and certificate issued by the Panchayath I feel the Tahsildar should allow the claim based on such evidence coupled with what is produced from the Panchayath. Since the building is used as residential building, first monthly electricity bill showing consumption will itself disclose the date of commencement of occupancy of the building by the petitioner for residence. However, payment of electricity bill at commercial tariff for construction purpose should not be taken as evidence for completion of building on any date anterior to the date on which construction was fully completed. Tahsildar is directed to consider evidence produced by the petitioner such as first monthly electricity bill at domestic tariff, evidence regarding house-warming, payment of contractor's bills, along with panchayath documents, etc., and decide the date of completion of construction of the building afresh after hearing the petitioner. Tahsildar will decide the matter within two months from the date of production of a copy of this judgment. No luxury tax should be

demanded or recovered from the petitioner for three months, and thereafter recovery will be based on fresh orders to be issued by the Tahsildar with supporting reasons thereof.

W.P. is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge